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8 UNITED STATES DISTRICT COURT
9 WESTERN DISTRICT OF WASHINGTON
AT TACOMA

10 NICHOLAS HACHENEY,
11 Petitioner,

12 v.

13 MIKE OBENLAND,
14 Respondent.

CASE NO. 3:15-CV-05492-RBL-DWC
ORDER GRANTING MOTION FOR
LEAVE TO AMEND

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16 The District Court has referred this action to United States Magistrate Judge David W.
17 Christel. Petitioner Nicholas Hacheney, through court-appointed counsel Jeffrey E. Ellis, filed his
18 federal habeas Petition (“Petition”), pursuant to 28 U.S.C. § 2254, seeking relief from a state court
19 conviction. Dkt. 1. Presently pending before the Court is Petitioner’s Motion for Leave to Amend
20 Habeas Petition (“Motion”). Dkt. 35.

21 **BACKGROUND**

22 On July 16, 2015, Petitioner filed his Petition raising six grounds for relief. *See* Dkt. 1.
23 After review of the Petition, the Court concluded Petitioner’s fifth ground for relief (“Ground 5”)
24 raised a *Brady* violation, which had not been exhausted. *See* Dkt. 34. On May 11, 2016, the Court

ordered Petitioner to show cause why Ground 5 should not be denied based on a failure to exhaust and procedural default. Dkt. 34. On May 23, 2016, Petitioner filed the Motion, which the Court interprets as a response to the Order to Show Cause, stating he intended to raise Ground 5 as a Confrontation Clause violation. Dkt. 35. He now seeks leave to amend his Petition to clearly assert a Confrontation Clause violation. *Id.* Petitioner states Respondent has no objection to the request to amend. *Id.* at p. 4.¹

DISCUSSION

A habeas petition may be amended as provided by Rule 15 of the Federal Rules of Civil Procedure. *Mayle v. Felix*, 545 U.S. 644, 649 (2005). Pursuant to Rule 15(a),

(1) ***Amending as a Matter of Course***

A party may amend its pleading once as a matter of course within:

(A) 21 days after serving it, or

(B) if the pleading is one to which a responsive pleading is required, 21 days after service of a responsive pleading or 21 days after service of a motion under Rule 12(b), (e), or (f), whichever is earlier.

(2) ***Other Amendments***

In all other cases, a party may amend its pleading only with the opposing party's written consent or the court's leave. The court should freely give leave when justice so requires.

The time for filing an amended petition as a matter of course has expired. To amend his Petition, Plaintiff must have Respondent's written consent or the Court's leave. *See* Fed.R.Civ.P. 15(a)(2). Respondent has not provided written consent; however, Petitioner states Respondent does not object to the request to amend his Petition. Dkt. 35. Regardless of written permission from Respondent, the Court finds justice requires Petitioner be allowed to amend his Petition.

¹ Respondent has not filed a response to the Motion.

